

APPEAL NO. 001526

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 16, 2000. With respect to the single issue before him, the hearing officer determined that the appellant's (claimant) impairment rating (IR) is zero percent as certified by the designated doctor selected by the Texas Workers' Compensation Commission (Commission). In his appeal, the claimant asserts error in the hearing officer's having given presumptive weight to the designated doctor's IR. The appeals file does not contain a response to the claimant's appeal from the respondent (self-insured).

DECISION

Affirmed.

Because only the issue of the claimant's IR is before us on appeal, our factual recitation will be limited to those facts most germane to that issue. It is undisputed that the claimant sustained a compensable injury to his right ankle on _____. The claimant testified that he was injured when he jumped from a platform to a ladder and twisted his right ankle. The claimant stated that he has had two surgeries on his right ankle as a result of the compensable injury and that a third surgery has been recommended but he has not yet had that surgery. The parties stipulated that the claimant reached maximum medical improvement (MMI) on August 4, 1999.

The claimant's treating doctor for his compensable injury is Dr. D. On August 31, 1999, Dr. D referred the claimant to Dr. B to perform an IR examination because Dr. D does not do such examinations. In a Report of Medical Evaluation (TWCC-69) dated August 31, 1999, Dr. B certified that the claimant reached MMI by operation of Section 401.011(30)(B) with an IR of five percent. In his accompanying narrative report, Dr. B stated that the claimant's five percent IR was assigned for loss of range of motion (ROM) in the ankle. The claimant disputed Dr. B's IR and Dr. T was selected by the Commission to serve as the designated doctor. On October 11, 1999, Dr. T examined the claimant and in a TWCC-69 of the same date, Dr. T certified that the claimant reached MMI on August 4, 1999, with an IR of zero percent. In the narrative report accompanying his TWCC-69, Dr. T stated that his examination did not show any "objective sensory deficit" or "objective motor deficit" of the right lower extremity and that the claimant did not have a ratable specific disorder of the right ankle. In addition, Dr. T stated that the claimant's ROM testing did not demonstrate any impairment. On February 22, 2000, the Commission forwarded a copy of Dr. B's report to Dr. T for him to review and to determine its effect, if any, on the zero percent IR he had certified. In a letter dated February 28, 2000, Dr. T stated that he had reviewed Dr. B's report and that it did not change his opinion that the claimant's IR is zero percent. Dr. T explained that "I did not find any sensory or motor deficits, nor did I find any ratable specific disorders in regards to the right ankle." In addition, Dr. T stated that no deficits were noted in the ROM testing performed by his technician on October 11, 1999.

In a letter to the claimant dated November 29, 1999, Dr. D noted his disagreement with the zero percent IR assigned to the claimant by Dr. T, stating that the “more accurate and comprehensive rating was provided by [Dr. B].” In a letter dated January 17, 2000, to the Commission, Dr. B likewise expressed his disagreement with Dr. T’s zero percent rating. Dr. B maintained that the five percent IR he certified was accurate and noted that a technician had performed the ROM testing for the designated doctor, stating that he personally felt “that a patient must be examined by the impairment doctor so that all points to the patient’s condition can be covered.”

The claimant argues that the hearing officer erred in giving presumptive weight to the designated doctor's zero percent IR, asserting that Dr. B's five percent rating should be adopted. The difference in the ratings of Dr. T and Dr. B is attributable to their respective determination of whether to assign a rating for loss of ROM in the claimant's right ankle. Dr. B assigned a five percent rating for loss of ROM in the claimant's ankle, while Dr. T assigned a zero percent rating because the testing performed by his technician did not reveal ROM deficits. The decision of whether to assign a rating for loss of ROM represents a difference of medical opinion. By giving presumptive weight to the designated doctor's report under Sections 408.122(c) and 408.125(e), the legislature has established a procedure where the designated doctor's resolution of such differences is to be accepted. The opinion of Dr. B does not rise to the level of the great weight of the other medical evidence contrary to Dr. T's report. Accordingly, we cannot agree that the hearing officer erred in giving presumptive weight to Dr. T's report and, thus, determining that the claimant had an IR of zero percent. To the extent that the claimant contends that the designated doctor's report is not entitled to presumptive weight because a technician performed the ROM testing, we note that we have long stated that a designated doctor can rely on tests, exams, and reports done by others provided the IR ultimately assigned is a result of the independent professional judgment of the designated doctor. Texas Workers' Compensation Commission Appeal No. 93095, decided March 19, 1993. In this instance, the record reflects that Dr. T performed an examination on the claimant and that Dr. T reviewed and adopted the technician's ROM measurements as his own for the purpose of determining the claimant's IR. As such, the hearing officer did not err in giving the designated doctor's report presumptive weight.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge